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6 Attorneys for Defendant MIDLAND
CREDIT MANAGEMENT, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 QUINELLA SMITH, an individual,

12 Plaintiff,

13 v.

14 MIDLAND CREDIT
MANAGEMENT, INC.,

15 Defendant.
16

Case No. **'14CV0005 W DHB**

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(a)**

State Court Complaint Filed: 12/03/13

17 TO THE CLERK OF THE COURT:

18 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441(a) and 1331,
19 Defendant Midland Credit Management, Inc. ("Midland") hereby removes this
20 action from the Superior Court of the State of California for the County of San
21 Diego, Case No. 37-2013-00077724-CL-CO-CTL (the "State Case") to the United
22 States District Court for the Southern District of California. The grounds for this
23 removal are:

24 **FACTUAL SUMMARY**

25 1. On December 2, 2013, Plaintiff Quinella Smith commenced the State
26 Case alleging violations of the federal Fair Debt Collection Practices Act (15 U.S.C.

27 ///

28 ///

1 § 1692 *et seq.*) and the Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code
2 § 1788 *et seq.*).

3 2. Midland was served with the summons and complaint on December 2,
4 2013.

5 3. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b) because
6 it is being filed within thirty days after service of the complaint.

7 **JURISDICTION**

8 4. Removal is proper pursuant to 28 U.S.C. § 1441(a), which entitles a
9 defendant to remove “any civil action brought in a State court of which the district
10 courts of the United States have original jurisdiction,” and 28 U.S.C. § 1331, which
11 gives district courts “original jurisdiction of all civil actions arising under the
12 Constitution, laws, or treaties of the United States.” The district court has
13 supplemental jurisdiction over the alleged state law claim because it is so related to
14 the claim over which the district court has original jurisdiction that it “form[s] part
15 of the same case or controversy.” 28 U.S.C. § 1367(a).

16 5. Pursuant to 28 U.S.C. § 1446(a), Midland attaches as Exhibits 1 and 2 a
17 copy of all process, pleadings, and orders served upon defendant in the State Court
18 action.

19
20 DATED: January 2, 2014

SOLOMON WARD SEIDENWURM &
SMITH, LLP

21
22
23 By: /s/Thomas F. Landers

24 THOMAS F. LANDERS

25 LEAH S. STRICKLAND

26 Attorneys for Defendant MIDLAND
27 CREDIT MANAGEMENT, INC.
28

INDEX TO EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pages

Exhibit 1: State Court Action	4-27
Exhibit 2: State Court Answer	28-33

EXHIBIT 1

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Midland Credit Management, Inc.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Quinnella Smith

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/02/2013 at 08:38:42 AM

Clerk of the Superior Court
By Rebecca Vela, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
330 W. Broadway, Room 225
San Diego, CA 92101

CASE NUMBER:
(Número del Cas) 37-2013-00077724-CL-CO-CTL

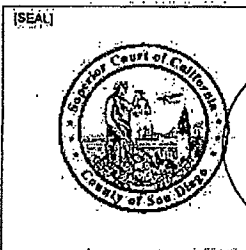
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Christopher Wrabel (SBN#234175) 1723 Russell Way, Roseville, Ca. 95661

DATE: 12/02/2013
(Fecha)Clerk, by: *R. Vela* Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

- NOTICE TO THE PERSON SERVED:** You are served
- ☐ as an individual defendant.
 - ☐ as the person sued under the fictitious name of (specify):
 - ☒ on behalf of (specify): Midland Credit Management, Inc.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
 - ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (rev. July 1, 2009)

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

1 Law Office of Chris Wrabel
2 Christopher Wrabel SBN: 234175
3 1723 Russell Way
4 Roseville, CA 95661
5 (916) 990-1923
6 cwrabel@yahoo.com

7 Attorneys for Plaintiff Quinella Smith

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/02/2013 at 08:38:42 AM
Clerk of the Superior Court
By Rebecca Vela, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN DIEGO**

10 **LIMITED CIVIL CASE**

11 Case No. 37-2013-00077724-CL-CO-CTL

12 Quinella Smith an individual,
13
14 Plaintiff,

COMPLAINT FOR DAMAGES
Amount demanded does not exceed
\$10,000

15 v.

16 Midland Credit Management, Inc.,
17
18 Defendant.

19
20 **COMPLAINT**

21 **I. INTRODUCTION**

22 1. This is an action for damages brought by an individual consumer for Defendant's
23 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter
24 "FDCPA") and the Rosenthal Debt Collection Practices Act, California Civil Code §§ 1788 *et*
25 *seq.* which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.
26
27
28

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff, Quinella Smith, is a natural person residing in Warren, AR.

4. Defendant, Midland Credit Management, Inc., is a business entity engaged in the business of collecting debts in this state with its principal place of business located at 3111 Camino Del Rio N #1300, San Diego, CA 92108. The principal purpose of Defendant is the collection of debts using the mails and telephone, and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6) and as defined by California Civil Code § 1788.2(c).

6. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3).

IV. FACTUAL ALLEGATIONS

7. Defendant Midland Credit Management, Inc. attempted to collect a debt allegedly owed by Plaintiff relating to consumer purchases allegedly owed to Midland Funding LLC.

8. The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and falls within the definition of "debt" for purposes of 15 U.S.C. § 1692a(5).

9. Midland Credit Management, Inc. sent Plaintiff a dunning letter dated February 13, 2013.

1 10. This letter stated "PRE-LEGAL REVIEW" in large capital letters and bold font.
2 This letter also stated the following: "Midland Credit Management, Inc. is considering
3 forwarding this account to an attorney in your state for possible litigation If we don't hear
4 from you or receive payment by 03-30-2013, we may proceed with forwarding this account to an
5 attorney."

6 11. This statement was an implied threat that Plaintiff would be sued if she did not
7 pay her alleged debt.

8 12. Upon information and belief, Midland Credit Management, Inc. never intended to
9 commence any legal action against Plaintiff.

10 13. Thus, Midland Credit Management, Inc. falsely raised the specter of potential
11 legal action, in violation of the FDCPA.

12 14. Defendant knew or should have known that its actions violated the FDCPA.
13 Additionally, Defendant could have taken the steps necessary to bring its actions within
14 compliance with the FDCPA, but neglected to do so and failed to adequately review its actions to
15 ensure compliance with said laws.
16

17 15. At all times pertinent hereto, Defendant was acting by and through its agents,
18 servants and/or employees, who were acting within the scope and course of their employment,
19 and under the direct supervision and control of the Defendant herein.
20

21 16. At all times pertinent hereto, the conduct of Defendant, as well as that of its
22 agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in
23 wanton disregard for federal law and the rights of the Plaintiff herein.
24

25 17. As a result of Defendant's conduct, Plaintiff has sustained actual damages
26 including, but not limited to, emotional and mental pain and anguish.

27 ***V. FIRST CLAIM FOR RELIEF***

18. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

19. The above contacts between Defendant and Plaintiff were "communications" relating to a "debt" as defined by 15 U.S.C. § 1692a(2) and 1692a(5) of the FDCPA.

20. Defendant Midland Credit Management, Inc. violated provisions of the FDCPA, including, but not limited to, the following:

21. The FDCPA 15 U.S.C. § 1692e(5) prohibits threatening to take any action that is not intended to be taken. FDCPA 15 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means in connection with the collection of a debt.

22. The words **“PRE-LEGAL REVIEW”** in large capital letters and bold font, and the language that “Midland Credit Management, Inc. is considering forwarding this account to an attorney in your state for possible litigation If we don’t hear from you or receive payment by 03-30-2013, we may proceed with forwarding this account to an attorney,” is a threat that legal action will be taken against Plaintiff if her account is not paid. Midland Credit Management, Inc. falsely raised the specter of potential legal action, in violation of the FDCPA.

23. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for declaratory judgment that defendants' conduct violated the FDCPA, and Plaintiff's actual damages, statutory damages which can be up \$1,000, and costs and attorney fees.

VI. SECOND CLAIM FOR RELIEF

24. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

25. California Civil Code § 1788.17 states the following: “Every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections

1 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15
2 of the United States Code.”

3 26. Defendant violated California Civil Code §§ 1788.17 by violating § 1692e(3), §
4 1692e(5), and § 1692e(10) of the FDCPA.

5 27. As a result of the above violations of the Rosenthal Fair Debt Collection
6 Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief and for
7 actual damages, statutory damages, and attorney fees and costs.
8

9
10 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 11 A. Declaratory judgment that defendant’s conduct violated the FDCPA, and declaratory
12 and injunctive relief for the defendant’s violations of the California Rosenthal Fair
13 Debt Collection Practices Act.
14 B. Actual damages.
15 C. Statutory damages pursuant to 15 U.S.C. § 1692k.
16 D. Statutory damages pursuant to California Civil Code § 1788.30.
17 E. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k.
18 F. For such other and further relief as may be just and proper.

19
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Dated: 11/27/13

LAW OFFICES OF CHRIS WRABEL

By: /s/Christopher J. Wrabel
CHRISTOPHER WRABEL, Esq.
Attorney for Plaintiff Quinella Smith

PROOF OF SERVICE BY MAIL

I, the undersigned, hereby declare: I am over the age of 18 and not a party to the within action;
my

address is _____.

On _____, 2013, I served the foregoing document described as
Complaint on interested parties in this action by placing the true copies thereof enclosed in
sealed envelopes addressed as follows:

Midland Credit Management, Inc.
3111 Camino Del Rio N. #1300
San Diego, CA 92108

VIA:

☒ **MAIL** I am "readily familiar" with the practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with U.S. postal
service on that same day with postage thereon fully prepaid at place of business,
California in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

☒ I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

(sign) _____

(type or print name of server, not Defendant)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Law Offices of Chris Wrabel Christopher Stefan, SBN#234175 1723 Russell Way Roseville, Ca. 95661 TELEPHONE NO.: (916)990-1923 FAX NO.: ATTORNEY FOR (Name): Quinella Smith, Petitioner.		CM-010 ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/02/2013 at 08:36:42 AM Clerk of the Superior Court By Rebecca Vela, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO. STREET ADDRESS: 330 W. Broadway, Room 225 MAILING ADDRESS: Same as above CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Smith v. Midland Credit Management, Inc.		
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NO.: 37-2013-00077724-CL-CO-CTL JUDGE: Judge Joan M. Lewis DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort: <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other, non-P/PI/D/W/D tort (35) Employment: <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract: <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input checked="" type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **one**
5. This case: ☐ is ☒ is not a class action suit
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/27/13

Christopher Wrabel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)
CIVIL CASE COVER SHEET
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim, subject to arbitration, check this item instead of Auto)

Other P/PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04):
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/PI/PD/W/D (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/W/D (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/PI/PD/W/D

Non-P/PI/PD/W/D (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/PI/PD/W/D Tort (35)
Employment
Wrongful Termination (35)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller/Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (16)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)
Unlawful Detainer
Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition/Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Enforcement of Judgment
Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-fort/non-complex)
Other Civil Complaint (non-fort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 2 of 2

FILED
Clerk of the Superior Court

JAN 03 2013

By: Amy Helfers

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**IN RE PROCEDURES REGARDING
ELECTRONIC FILING**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT
ORDER NO. 010313**

THIS COURT FINDS AND ORDERS AS FOLLOWS:

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program ("Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files and, in Phase Two, allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories.

Phase One of the Program, described in General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, involved the court's scanning of papers in newly filed cases in designated divisions and departments (the "Imaging Project"). Phase Two of the Program is the implementation of electronic filing by counsel and parties through the court's E-File Service Provider.

Electronic filing under Phase Two of the Program will initially be limited to the Central Civil Division only. Probate and North County Civil Divisions of the Superior Court

1 are excluded from Phase Two of the Program. This General Order relates to Phase Two,
2 and supplements General Order: *In re Procedures Regarding Electronically Imaged Court*
3 *Records, Electronic Filing, and Access to Electronic Court Records.*

4 Permissive E-Filing will begin January 7, 2013 in predetermined non-mandated civil
5 cases in the Central Division, and expand as resources permit. Beginning March 4, 2013,
6 E-Filing will be mandatory in certain types of cases. Further information on these initiatives
7 can be found on the court's website, at www.sdcourt.ca.gov.

8 Filing and service of documents by electronic means is governed by Code of Civil
9 Procedure Section 1010.6 and California Rules of Court ("CRC"), rules 2.250 et seq. and
10 CRC 2.30. In addition, the San Diego Superior Court's specific requirements for E-Filing
11 are available on the court's website. Litigants and attorneys electronically filing documents
12 must comply with all applicable rules and requirements.

13 **GENERAL E-FILING REQUIREMENTS**

14 Documents can only be electronically filed through the court's electronic service
15 provider (the "Provider"). E-File Provider information is available on the court's website.

16 Any document filed electronically shall be considered as filed with the Clerk of the
17 Superior Court when it is first transmitted to the Provider and the transmission is
18 completed, except that any document filed on a day that the court is not open for business,
19 or after 5:00 p.m. (Pacific Time) on a day the court is open for business, shall be deemed to
20 have been filed on the next court day.

21 Pursuant to Government Code section 68150 and California Rules of Court, rule
22 2.504, electronic documents, whether imaged by the court or filed by the parties, are
23 certified as official records of the court.

24 Additional and more specific information on electronic filing can be found on the
25 court's website.

26 ///

27 ///

28 ///

1 This Order shall expire on December 31, 2013, unless otherwise ordered by this
2 court.

3 IT IS SO ORDERED.

4 Dated: January 3, 2013

Robert Trentacosta

5 **ROBERT J. TRENTACOSTA**
6 Presiding Judge
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**ELECTRONIC FILING REQUIREMENTS OF THE
SAN DIEGO SUPERIOR COURT**

These requirements are issued pursuant to California Rules of Court ("CRC"), rules 2.250 et seq., Code of Civil Procedure Section 1010.6, and San Diego Superior Court General Order: In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records.

Effective November 1, 2013, documents that are determined to be unacceptable for eFiling by the Court due to eFiling system restrictions or for failure to comply with these requirements will be rejected subject to being allowed to be filed nunc pro tunc to the original submittal date upon ex-parte application to the court and upon good cause shown.

It is the duty of the plaintiff (and cross-complainant) to serve a copy of the General Order of the Presiding Department, Order No. 010313, and Electronic Filing Requirements of the San Diego Superior Court with the complaint (and cross-complaint).

PERMISSIVE eFILING

Effective January 7, 2013, the court allowed subsequent documents to be filed electronically in predetermined non-mandated civil cases in the Central Division by the Soft Launch Authorized Project Participants.

Effective March 4, 2013, documents **may be filed electronically** in non-mandated civil cases in the Central Civil Division where either: (1) the case is first initiated on or after March 4, 2013; or (2) the case is already pending as of March 4, 2013 and has been imaged by the court.

MANDATORY eFILING

The case types that shall be subject to mandatory eFiling are: civil class actions; consolidated and coordinated actions where all cases involved are imaged cases; and actions that are provisionally complex under CRC 3.400 – 3.403 (as set forth in the Civil Case Cover Sheet, Judicial Council form CM-010 – but not including Construction Defect actions). “Complex cases” included in mandatory eFiling include Antitrust/Trade Regulation, Mass Tort, Environmental/Toxic Tort, and Securities Litigation cases, as well as insurance coverage claims arising from these case types. Construction Defect cases, currently being electronically filed through File&Serve Xpress (fka Lexis Nexis File&Serve) website, will continue to be electronically filed through that system until further notice.

For cases of the type subject to mandatory eFiling that are initiated on or after March 4, 2013, all documents **must be filed electronically**, subject to the exceptions set forth below.

For cases of the type subject to mandatory eFiling that are already pending as of March 3, 2013, and provided that the case has been

imaged by the court, all documents filed on or after March 4, 2013 **must be filed electronically**, subject to the exceptions set forth below.

A party may request to be excused from mandatory electronic filing requirements. This request must be in writing and may be made by ex parte application to the judge or department to whom the case is assigned. The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.

Self-represented litigants are not required to eFile in a mandatory eFile case; however, they may eFile if they choose to do so and/or are otherwise ordered to eFile by the court.

REQUIREMENTS FOR ALL eFILERS

eFile documents can only be filed through the court's Electronic Filing and Service Provider (the "Provider"). See www.onelegal.com.

eFilers must comply with CRC 2.250 – 2.261. Also, all documents electronically filed must be in a pdf format using Adobe Acrobat version 7 or higher that is also a text searchable format, i.e. OCR. The court is unable to accept documents that do not comply with these requirements, or documents that include but are not limited to: digitized signatures, fillable forms, or a negative image.

Documents that contain exhibits must be bookmarked, as set forth on the Provider's site. Documents not so bookmarked are subject to rejection. Moving papers with exhibits that are not bookmarked will be rejected. (See CRC 3.1110(f) with bookmarking being the substitute for plastic tabs in electronically filed documents.)

Exhibits to be considered via a Notice of Lodgment shall not be attached to the electronically filed Notice of Lodgment; instead, the submitting party must provide the assigned department with hard copies of the exhibits with a copy of the Notice of Lodgment that include the eFiling Transaction ID# noted in the upper right hand corner.

Unless otherwise required by law, per CRC 1.20 (b) only the last four digits of a social security or financial account number may be reflected in court case filings. Exclusion or redaction is the responsibility of the filer, not the clerk, CRC 1.20(b)(3). Failure to comply with this requirement may result in monetary sanctions, CRC 2.30(b).

Proposed filings, such as proposed court orders and amended complaints, should be submitted as an exhibit and then re-submitted as a separate and new eFiling transaction once the Court has ruled on the matter to which the proposed document applies. See also CRC 3.1312.

Any document filed electronically shall be considered as filed with the Clerk of the Superior Court when it is first transmitted to the vendor and the

transmission is completed, except that any document filed on a day that the court is not open for business, or after 5:00 p.m. (Pacific Standard Time) on a day the court is open for business, **shall be deemed to have been filed on the next court day.**

Please be advised that you must schedule a motion hearing date directly with the Independent Calendar Department. A motion filed without an appointment, even when a conformed copy of the filing is provided by the court, is not scheduled and the hearing will not occur.

If a hearing is set within 2 court days of the time documents are electronically filed, litigant(s) must provide hard copies of the documents to the court. Transaction ID numbers must be noted on the documents to the extent it is feasible to do so. Hard copies for Ex Parte hearings must be delivered directly to the department on or before 12 Noon the court day immediately preceding the hearing date.

An original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document, pursuant to CRC 2.257.

DOCUMENTS INELIGIBLE FOR ELECTRONIC FILING

The following documents are **not eligible for eFiling** in cases subject to either mandatory or permissive filing, and shall be filed in paper form:

- Safe at Home Name Change Petitions
- Civil Harassment TRO / RO
- Workplace Violence TRO / RO
- Elder Abuse TRO / RO
- Transitional Housing Program Misconduct TRO / RO
- School Violence Prevention TRO / RO
- Out-of-State Commission Subpoena
- Undertaking / Surety Bonds
- Request for Payment of Trust Funds
- Writs
- Notice of Appeal of Labor Commissioner
- Abstracts
- Warrants
- Settlement Conference Briefs (to be lodged)
- Confidential document lodged conditionally under seal
- Interpleader actions pursuant to CC2924j

The following documents **may be filed in paper form**, unless the court expressly directs otherwise:

- Documents filed under seal or provisionally under seal pursuant to CRC 2.551 (although the motion to file under seal itself must be electronically filed)

- Exhibits to declarations that are real objects, i.e. construction materials, core samples, etc. or other documents, i.e. plans, manuals, etc., which otherwise may not be comprehensibly viewed in an electronic format may be filed in paper form

DOCUMENTS DISPLAYED ON THE PUBLIC-FACING REGISTER OF ACTIONS

Any documents submitted for eFiling (and accepted) will be filed and displayed on the San Diego Superior Court's public-facing Register of Actions with the exception of the following documents:

- CASp Inspection Report
- Confidential Cover Sheet – False Claims Action
- Confidential Statement of Debtor's Social Security Number
- Financial Statement
- Request for Accommodations by Persons with Disabilities and Court's Response
- Defendant / Respondent Information for Order Appointing Attorney Under Service Members Civil Relief Act
- Request to Waive Court Fees
- Request to Waive Additional Court Fees

Documents not included in the list above, that are intended to be kept confidential, should NOT be eFiled with the court.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2013-00077724-CL-CO-CTL CASE TITLE:

Quinella Smith v Midland Management Inc [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 460-7065	
PLAINTIFF(S) / PETITIONER(S): Quinella Smith	
DEFENDANT(S) / RESPONDENT(S): Midland Credit Management INC	
QUINELLA SMITH V MIDLAND MANAGEMENT INC [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2013-00077724-CL-CO-CTL

CASE ASSIGNMENT

Judge: Joan M. Lewis

Department: C-65

COMPLAINT/PETITION FILED: 12/02/2013

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	05/30/2014	10:45 am	C-65	Joan M. Lewis

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

Superior Court of California
County of San Diego

**NOTICE OF ELIGIBILITY TO eFILE
AND ASSIGNMENT TO IMAGING DEPARTMENT**

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order 010313 at www.sdcourt.ca.gov for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

Please refer to the General Order - Imaging located on the San Diego Superior Court website at:

<http://www.sdcourt.ca.gov/CivillmagingGeneralOrder>

Page: 2



CORPORATION SERVICE COMPANY

Notice of Service of Process

WAS / ALL
Transmittal Number: 11904819
Date Processed: 12/03/2013

Primary Contact: Milana Ashirov
Midland Credit Management, Inc.
3111 Camino del Rio North
Suite 1300
San Diego, CA 92108

Entity:	Midland Credit Management, Inc Entity ID Number 1682419
Entity Served:	Midland Credit Management, Inc.
Title of Action:	Quinella Smith vs. Midland Credit Management, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Violation of State/Federal Act
Court/Agency:	San Diego County Superior Court, California
Case/Reference No:	37-2013-00077724-CL-CO-CTL
Jurisdiction Served:	California
Date Served on CSC:	12/02/2013
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Christopher Wrabel 916-990-1923

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT 2

1 THOMAS F. LANDERS [SBN 207335]
 tlanders@swsslaw.com
 2 LEAH S. STRICKLAND [SBN 265724]
 lstrickland@swsslaw.com
 3 SOLOMON WARD SEIDENWURM & SMITH, LLP
 401 B Street, Suite 1200
 4 San Diego, California 92101
 (t) 619.231.0303
 5 (f) 619.231.4755

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
12/31/2013 at 08:00:00 AM
 Clerk of the Superior Court
 By Rebecca Vela, Deputy Clerk

6 Attorneys for Defendant MIDLAND CREDIT
 MANAGEMENT, INC.

7
 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10
 11 QUINELLA SMITH, an individual,
 12 Plaintiff,

13 v.

14 MIDLAND CREDIT MANAGEMENT, INC.,
 15 Defendant.

Case No. 37-2013-00077724-CL-CO-CTL

**ANSWER TO PLAINTIFF'S
 COMPLAINT**

[IMAGED FILE] – Limited Civil Case

Judge: Joan M. Lewis
 Dept.: C-65

Action Filed: December 2, 2013

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 17
 18 Defendant MIDLAND CREDIT MANAGEMENT, INC. ("Defendant") answers the
 19 Complaint of Plaintiff QUINELLA SMITH ("Plaintiff") as follows:

20 **GENERAL DENIAL**

21 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant
 22 generally and specifically denies each and every allegation set forth in the Complaint, and the
 23 whole thereof, and generally and specifically denies that Plaintiff has been injured or has suffered
 24 any damages in any sum whatsoever.

25 **AFFIRMATIVE DEFENSES**

26 As and for separate affirmative defenses to the Complaint, Defendant alleges on
 27 information and belief as follows:

28 ///

P:00832617-2:87025.034

37-2013-00077724-CL-CO-CTL

ANSWER TO PLAINTIFF'S COMPLAINT

Exhibit 2

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The allegations of the Complaint fail to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations/Laches)

2. The purported claims set forth in the Complaint are barred in whole or in part by the applicable statutes of limitation and/or the equitable doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

3. Defendant alleges on information and belief that the allegations in the Complaint and relief requested are, on information and belief, barred in whole or in part by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(No Willful Conduct)

4. Defendant acted in good faith at all times in its dealings with Plaintiff, and if any conduct by Defendant is found to be unlawful, which Defendant expressly denies, such conduct was not willful and should not give rise to liability.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

5. Defendant alleges on information and belief that Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendant.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Defendant alleges on information and belief that Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and admissions with respect to the financial obligation at issue.

SEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

7. Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

EIGHTH AFFIRMATIVE DEFENSE

(Apportionment)

8. Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of this Defendant should be reduced accordingly.

NINTH AFFIRMATIVE DEFENSE

(Supervening Cause)

9. The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

TENTH AFFIRMATIVE DEFENSE

(Equitable Indemnity)

10. To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

(Litigation Privilege)

11. The actions of Defendant complained of in the Complaint constitute communications that were made in good faith and in anticipation of or in connection with ongoing litigation and Plaintiff's claim is therefore barred, in whole or in part, by the California litigation privilege.

TWELFTH AFFIRMATIVE DEFENSE

(First Amendment)

12. Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution.

THIRTEEN AFFIRMATIVE DEFENSE

(Privilege)

13. Defendant alleges that any of its actions and/or communications, if any, whether written or oral, were privileged pursuant to California Civil Code § 47, § 1785.32, 15 U.S.C. § 1692k(d), the common law; and that the use of the process that Plaintiff claims were abused was a publication made in the course of judicial or similar proceedings and were absolutely privileged under California Civil Code § 47(b).

FOURTEENTH AFFIRMATIVE DEFENSE

(Conduct of Others)

14. Plaintiff's damages, if any, were caused by the actions or inactions of others over whom this answering Defendant had no control.

FIFTEENTH AFFIRMATIVE DEFENSE

(Bona Fide Error)

15. To the extent that any violation of law occurred, which Defendant expressly denies, said violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Defendant of procedures reasonably adapted to avoid any such error.

SIXTEENTH AFFIRMATIVE DEFENSE

(Right to Amend)

16. Defendant reserves the right to amend this Answer to allege additional affirmative defenses.

PRAYER

WHEREFORE, Defendant MIDLAND CREDIT MANAGEMENT, INC. requests judgment as follows:

///

- 1 1. That Plaintiff takes nothing by way of her Complaint, which should be dismissed
- 2 with prejudice;
- 3 2. That Defendant recover from Plaintiff its costs according to proof;
- 4 3. That Defendant recover its attorneys' fees according to proof; and
- 5 4. That the Court orders such other further reasonable relief as the Court may deem
- 6 just and proper.

7
8 DATED: December 30, 2013

SOLOMON WARD SEIDENWURM & SMITH, LLP

9
10 By: 

11 THOMAS F. LANDERS
12 LEAH S. STRICKLAND
13 Attorneys for Defendant MIDLAND CREDIT
14 MANAGEMENT, INC.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 401 B Street, Suite 1200, San Diego, CA 92101.

On December 30, 2013, I served true copies of the following document(s) described as **ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:

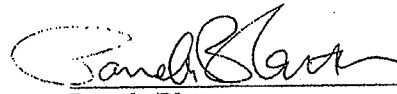
Christopher Wrabel, Esq.
Law Office of Christopher Wrabel
1723 Russell Way
Roseville, CA 95661
916-990-1923
cwrabel@yahoo.com

Attorney for Plaintiff Quinella Smith

BY MAIL: I enclosed the document(s) in sealed envelope(s) or package(s) addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with Solomon Ward Seidenwurm & Smith, LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 30, 2013, at San Diego, California.



Pamela Blanton

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

QUINELLA SMITH

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Christopher Wrabel, Esq.
Law Office of Christopher Wrabel
1723 Russell Way
Roseville, CA 95661
Tel: (916) 990-1923

DEFENDANT

MIDLAND CREDIT MANAGEMENT, INC.

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Thomas F. Landers, Esq. and Leah S. Strickland, Esq.
SOLOMON WARD SEIDENWURM & SMITH, LLP
401 B Street, Suite 1200
San Diego, CA 92101
Tel. (619) 231-0303; Fax (619) 231-4755

'14CV0005 W DHB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692 et seq.

Brief description of cause: Plaintiff alleges violations of federal and state Fair Debt Collection Practices Acts.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND**CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
January 2, 2014SIGNATURE OF ATTORNEY OF RECORD
/s/Thomas F. Landers**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

